



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI

GOVERNOR

DAVID P. LITTELL

COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection

FROM: Christina Stacey, Bureau of Land & Water Quality, Augusta

RE: Consent Agreement for Michael Emmons

DATE: December 3, 2009

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**Statute and Rule Reference:** *The Natural Resources Protection Act*, 38 M.R.S. § 480-C, prohibits the reconstruction and expansion of structures and the displacement of vegetation in a coastal sand dune system without first obtaining a permit from the Department.

**Location:** Scarborough

**Description:** On March 3, 2008, Department staff inspected the property of Michael Emmons located on Morning Street in Scarborough and found a single family dwelling being substantially renovated and expanded in both footprint and height. The inspection also revealed that a wooden sea wall had been recently reconstructed and that a new closed stone wall was under construction atop the wooden sea wall. Dune vegetation consisting mostly of *rosa rugosa* shrubs had been removed from the property. No permits had been obtained from the Department for these activities.

**Environmental Issues:** Coastal sand dune systems are fragile, dynamic resources that comprise only about two percent of Maine's overall coastline. These sandy stretches are considered resources of state significance since they act as natural barriers that protect the shoreline from storm events. They also provide vital habitat for a variety of wildlife including migratory shorebirds. Extensive development of sand dune areas and removal of vegetation can result in the inhibition of natural sand migration and can increase the risk of harm to both the coastal sand dune system and the structures themselves.

On October 6, 2008, Michael Emmons obtained Permit By Rule approval for the reconstruction of the wooden sea wall. On June 18, 2009, Michael Emmons obtained an after-the-fact license for the renovation and vertical expansion of the single family dwelling.

Department staff inspected the property on November 3, 2009 and found that the unapproved footprint expansion of the single-family dwelling had been removed, along with the closed stone wall. During the inspection, staff also found that the dune vegetation on the property had been restored in accordance with an approved landscaping plan.

**Department Recommendation:** The Department recommends acceptance of this Consent Agreement stipulating that Michael Emmons pay a monetary penalty of \$1,938.00, which has been paid. The Agreement also required that Michael Emmons complied with his after-the-fact permit and revegetate his lot in accordance with an approved plan, all of which has been done.

The penalty is based on the Department's penalty policy reflecting the knowledge of the violator and the fact that the violation could have been avoided.

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IN THE MATTER OF:

MICHAEL EMMONS	)	ADMINISTRATIVE CONSENT
SCARBOROUGH, CUMBERLAND, MAINE	)	AGREEMENT
NRPA	)	(38 M.R.S.A. § 347-A)
2008-032-L	)	

This Agreement by and among Michael Emmons, the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

1. Michael Emmons, 5228 Paylor Lane, Sarasota, Florida, owns two adjacent lots of land on Morning Street and Vesper Street in Scarborough, Maine as described and recorded in Book 24363 on Pages 216 and 218 of the Cumberland County Registry of Deeds.
2. The property described in Paragraph 1 of this Agreement is located entirely within a coastal sand dune system as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(1). A coastal sand dune system is a protected natural resource as defined by 38 M.R.S.A. § 480-B(8).
3. On March 3, 2008, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed a single family dwelling being substantially renovated and expanded within a frontal dune. The cost of improvements to the dwelling exceeded 50% of the building's appraised value. The dwelling was expanded by the alteration of the roof line, by the addition of a widow's walk on the roof, and by the addition of an approximately 5 foot by 9 foot roof over the door on the north side of the house. The inspection also revealed a recently reconstructed wooden sea wall on the property and a new stone wall under construction atop the wooden sea wall. Dune vegetation consisting mostly of *rosa rugosa* shrubs had been removed from the front and side of the property prior to the start of construction activities on the site. Michael Emmons did not obtain a permit from the Department for these activities.
4. By reconstructing and expanding a dwelling, reconstructing a seawall, constructing a new stone wall, and displacing vegetation in a protected natural resource, specifically a coastal sand dune system, without first obtaining a permit from the Department, Michael Emmons violated the *Natural Resources Protection Act* 38 M.R.S.A. § 480-C.

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2008-032-L	)	

5. On March 5, 2008, the Department issued a Notice of Violation to Michael Emmons regarding the violations described in Paragraphs 3 and 4 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
6. On April 9, 2008, Michael Emmons submitted a restoration plan to the Department to replant the areas of cut vegetation on the property described in Paragraph 1 of this Agreement. The restoration plan, prepared by New England Landscapes, Inc. is entitled "Emmons Residence" and is dated April 4, 2008. All restoration will be completed in accordance with this plan, which has been approved by Department staff.
7. On September 22, 2008, Michael Emmons submitted an after-the-fact Permit-By-Rule (PBR) application to reconstruct the wooden seawall. The after-the-fact PBR was approved by department staff on October 6, 2008.
8. On September 22, 2008, Michael Emmons submitted an after-the-fact permit application for the reconstruction and expansion of a single-family dwelling in a coastal sand dune system. The after-the-fact application has been assigned #L-23838-4M-B-N and was approved in part and denied in part on June 18, 2009. The order approved the reconstruction and vertical expansion of the dwelling but denied the addition of the roof over the door on the north side of the dwelling. A corrected order was approved on August 3, 2009, which updated Special Condition #8 to require removal of the expanded roof section by September 30, 2009 rather than September 1 as originally specified.
9. On January 6, 2009, Department staff inspected the property described in Paragraph 1 of this Agreement and determined that the closed stone wall had been dismantled and the materials removed from the property. The proposed plantings as shown on the restoration plan had not yet been installed.
10. The parties agree this Agreement constitutes a Notice of Violation pursuant to 38 M.R.S.A. § 347-A(1)(B) for any violations specifically cited in this Agreement but not previously noticed.
11. The Department has regulatory authority over the activities described herein.
12. Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.
13. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
14. To resolve the violations referred to in Paragraphs 3 and 4 of this Agreement, Michael Emmons agrees to:

IN THE MATTER OF:

MICHAEL EMMONS  
SCARBOROUGH, CUMBERLAND, MAINE  
NRPA  
2008-032-L

) ADMINISTRATIVE CONSENT  
) AGREEMENT  
) (38 M.R.S.A. § 347-A)  
)

- A. Comply with all terms and conditions of after-the-fact Department Order #L-23838-4M-B-N in accordance with the approved schedule therein.
- B. No later than October 19, 2009, implement the approved vegetation restoration plan dated April 4, 2008.
- C. Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100.00) per day per violation for the violation of any provision of this Agreement.
- D. Pay the Treasurer, State of Maine, upon signing this Agreement, the sum of one thousand nine hundred thirty eight dollars (\$1,938.00) as a civil monetary penalty.
15. The Department and the Office of the Attorney General grant a release of their causes of action against Michael Emmons for the specific violations listed in Paragraphs 3 and 4 of this Agreement on the express condition that all actions listed in Paragraph 14 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

MICHAEL EMMONS

BY:  DATE: 10/29/09  
MICHAEL EMMONS

BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
SUSAN M. LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL